IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 29204 of 2006(B)

OS.312/2004 OF MUNSIFF COURT, CHANGANACHERRY

PETITIONERS/JUDGMENT DEBTORS/DEFENDANTS:

1. **P.V. RADHAKRISHNAN NAIR,**
   KIZHAKKEPOTTAYIL HOUSE, KOTTAMURI BHAGOM,
   THRIKKODITHANAM VILLAGE, CHANGANACHERRY TALUK.

2. **RANJITH KRISHNAN,**
   S/O.RADHAKRISHNAN NAIR, DO. DO.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS/DECREE HOLDER/PLAINTIFF:

KADUMTHOTTU CHITTY FUND,
CHANGANACHERRY, REPRESENTED BY ITS
MANAGING PARTNER, SAJI THOMAS,
KADUMTHOTTU HOUSE, FATHIMAPURAM,
PERUNNA, CHANGANACHERRY.

BY ADV. SRI.P.SATHISAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 29204/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT IN OS NO. 213/04 OF THE MUNSIFF COURT, CHANGANACHERRY.

EXT.P2. COPY OF THE OBJECTION FILED BY THE 2ND DEFENDANT.

EXT.P3. COPY OF THE OBJECTION FILED BY THE 3RD DEFENDANT.

EXT.P4. COPY OF THE ORDER DT. 11/08/2006.

True copy

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PIUS C. KURIAKOSE, J.

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W.P.(C)No.29204 OF 2006

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DATED THIS THE 9th JULY, 2007

J U D G M E N T

I do not find any warrant for setting aside Ext.P4 order of the execution court by which that court has found that the petitioners, in spite of sufficient means, have wilfully neglected to pay the decree-debt. In fact, the only evidence which was available before the execution court was the evidence adduced by the decree-holder and the petitioners did not even adduce formal counter evidence. Exts.P2 and P3 are the objections filed by the petitioners to the prayer for arresting them. As far as Ext.P2 is concerned, I do not find any specific contention raised by the 2nd judgment-debtor that he does not have means to pay a substantial portion of the decree-debt. On the contrary, his contention is that he does not have means to pay the decree-debt in a lump and has means only to pay at the rate of Rs.1500/- per mensem. As far as Ext.P3 is concerned, the only contention in answer to the request for arrest is that the 2nd petitioner is not liable to be arrested and that he has already paid off more than 50% of the decree-debt. No wonder, these contentions did not appeal to the execution court, particularly since the petitioners had not adduced any counter evidence.

2. This Court while admitting this Writ Petition became inclined to grant stay only on condition that the petitioners deposit a sum of Rs.15,000/- towards the decree-debt. I am informed that the above condition was promptly complied with by the petitioners.

3. Under these circumstances, even as I repel the challenge against Ext.P4 order, I direct that the order of stay presently issued by this Court will continue on condition that the petitioners together pay a sum of Rs.3500/- every month commencing from 1st August, 2007 towards the decree-debt, till such time as the entire balance decree debt is wiped off. Once the petitioners become confident that the entire decree debt is wiped off, it is open to them to file an application before the court below for recording full satisfaction and if such an application is received, the court below will hear both sides and take a decision. It is made clear that if the petitioners cause any single default, they will forfeit all the benefits under this judgment, under which event the impugned order will revive.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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